

Case Nos: BL-2021-001939
BL-2021-002082

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY
COURTS OF ENGLAND AND
WALES BUSINESS LIST (ChD)

[2022] EWHC 3721 (Ch)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: Tuesday, 5 July 2022

Before :

HHJ Hodge QC
Sitting as a Judge of the High Court

Between :

Barclays Bank Plc

Claimant

- and -

(1) Scott Dylan
(2) Gareth Michael Dylan
(3) Sally Ann Glover
(4) David Samuel Antrobus

Defendants

And between:

Barclays Bank Plc

Claimant

- and -

(1) Fresh Thinking Group Limited
(2) James Mason
(3) INC Travel Group Limited

Defendants

Mr Andrew de Mestre QC and **Mr James Knott** (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimant**

Mr Andrew Latimer (instructed by **Brabners LLP**) for the **Respondents** (Mr Gareth Dylan, Mrs Sally Glover, Mr David Antrobus, and Mr James Mason)

Mr Doug Cochran (instructed by **Pannone Corporate LLP**) in an observational capacity for the First Defendant (Mr Scott Dylan)

Hearing date: **5th July 2022**

APPROVED JUDGMENT

Tuesday, 5 July 2

His Honour Judge Hodge QC:

1. This is my extempore judgment on a preliminary application in two related sets of proceedings. In the first claim, BL-2019-001939, the claimant is Barclays Bank Plc and the defendants are Mr Scott Dylan, his partner, Mr Gareth Michael Dylan, the first defendant's aunt, Mrs Sally Ann Glover, and, finally, Mr David Samuel Antrobus. Mr Scott Dylan, Mr Gareth Dylan and Mr David Antrobus are equal one-third shareholders in a company, Fresh Thinking Group Limited (now I think known as OLD3 Limited). That is the first defendant in action number BL-2021-002082. In that second action, the claimant is again Barclays Bank Plc. In addition to Fresh Thinking Group Limited, there are two further defendants: Mr Jack Mason and INC Travel Group Limited. Mr Mason is (or was) the chief executive officer of INC & Co Group Limited. He is also a 50% shareholder in that company, the other 50% shareholder being Fresh Thinking Group Limited.
2. In late October and November of last year, freezing injunctions were granted in favour of the claimant in both actions, and the substantive hearing before me is for the continuation of that freezing relief.
3. The evidence in support of the continuation of the freezing injunctions is now to be found in no less than five affidavits of Mr Mark Neils Cooper, a solicitor and partner in Eversheds Sutherland (International) LLP, who are the solicitors for Barclays Bank Plc, together with a single affidavit from Mr Mark John Kenyon, who is a director in the Special Asset Management Team of the claimant bank. There are witness statements from Mr Gareth Dylan and Mrs Sally Ann Glover, both dated 31 January 2022, and from Mr David Antrobus and Mr Jack Mason, both dated 1 February 2022.

4. The first defendant in the first action, Mr Scott Dylan, has agreed to the continuation of the freezing relief against him. He is represented at this hearing by counsel, Mr Doug Cochran, but solely in the capacity of an observer of these proceedings. Since freezing relief was first granted, the two corporate defendants to the second claim, Fresh Thinking Group Limited and INC Travel Group Limited (which I think is now known as OLD2 Limited) have entered into administration. The administrators have consented to the continuation of the freezing relief against those two companies. There are therefore four active respondents to the substantive application: Mr Gareth Dylan, Mrs Sally Ann Glover, Mr David Antrobus and Mr Jack Mason. They all represented by Mr Andrew Latimer (of counsel) who I understand was instructed only late last week. I shall refer to those four respondents as the respondents in this judgment. The claimant bank is represented by Mr Andrew de Mestre QC, leading Mr James Knott (of counsel).
5. The documentation before the court is substantial, surprisingly so for what is listed as a two-day substantive application. The papers now exceed 11,300 pages, extending over some 45-odd lever-arch files. I have received a detailed skeleton argument for the claimant from Mr de Mestre and Mr Knott, dated 29 June, in support of the substantive application. It runs to almost 70 pages and then there are various appendices to it.
6. Mr Latimer has contented himself with a rather more modest 17-page skeleton argument, dated 4 July 2022 - that is to say yesterday - together with a single appendix. The thrust of Mr Latimer's skeleton argument is directed to an application that was made on behalf of the respondents as recently as Thursday of last week (30 June 2022). That application seeks an order abridging time for service of the application, which was issued only two clear days before today's hearing. The substantive relief sought in the application notice is an order adjourning the substantive return hearing, currently listed for today and tomorrow, and for it to be re-listed, with the respondents

being given permission to serve further responsive evidence to the final round of evidence from the claimant bank (comprising Mr Cooper's fifth affidavit and the single affidavit of Mr Kenyon), with the claimant being allowed to submit further evidence in response, and - perhaps a little optimistically - an order that the claimant should pay each of the respondents' costs of the application. The evidence in support of the respondents' application is contained in a witness statement from Mr Thomas Smith, a solicitor and partner in Brabners LLP, the solicitors acting for the respondents, also dated 30 June 2022.

7. At paragraphs 4 to 8 of his witness statement, Mr Smith gives an overview of the application. He seeks to adjourn the hearing of the return dates to allow each of the respondents the ability to respond to the significant volume of new evidence filed against them. It is said that the volume and substance of the latest round of evidence against the respondents places them in a position where new and substantial evidence has been submitted against them without them having had any opportunity formally to respond to the same. In Mr Smith's submission, to expect the return date hearings to be capable of being fairly disposed of now, in the face of such evidence, and without giving the respondents the opportunity to respond, is impossible. Mr Smith says that he has tried, without success, to reach agreement with the claimant to adjourn the return date hearing voluntarily but agreement has not been forthcoming. He has offered to agree to the continuation of the freezing orders against each of the respondents, but subject to the reservation that they should each be permitted to resist the continuation of the freezing orders at a further return hearing without having to demonstrate a change of circumstances since the making of the order. That is put forward as a fallback position by Mr Latimer to the principal relief sought, which is the adjournment of the return date, albeit with the existing freezing injunctions being continued on an interim basis. At the outset of his submissions this morning, Mr Latimer suggested a potential fallback position to his fallback position, in that the ability of the respondents to resist the continuation of the freezing orders at a

further return hearing, without having to demonstrate a change of circumstances, should perhaps be limited in point of time, with any such application having to be made before, say, 1 September 2022.

8. There is no doubt about the basis upon which the court should approach this adjournment application. Mr Latimer has referred the court to the case of *Bilta (UK) Limited v Tradition Financial Services Limited* [2021] EWCA Civ 229, and specifically to the guidance at paragraph 30, where the guiding principle on an application to adjourn is said to be whether the hearing which is sought to be adjourned would be unfair if it were to go ahead. Mr Latimer submits that if the hearing of the effective return date of the freezing injunctions would be unfair, then the court should grant the respondents the adjournment they seek, regardless of any inconvenience to the other party, or to other court users, unless the claimant can show that it would suffer some injustice which outweighs the unfairness to the respondents, and which cannot be compensated for in some way. Mr Latimer submits that this hearing would be unfair unless the respondents are given an opportunity to respond to the substantial new evidence that has been produced in Mr Cooper's fifth affidavit and the affidavit of Mr Kenyon. He submits that there cannot be a fair hearing today and tomorrow because, if the hearing goes ahead, the claimant will reap the benefits of deploying evidence which has been prepared over several months, and which was only served on 1 June this year, against respondents who were not expecting such a volume of evidence, and in circumstances where they have had neither the time nor the resources to respond quickly to over 7,000 pages of new evidence, and where a minimum realistic time estimate for the hearing is said by the claimant to be two days.
9. In addition to considering the fairness of the hearing, I of course also have to bear in mind the overriding objective of dealing with these applications justly and at proportionate cost, seeking, so far as practicable, to ensure that the parties are on an equal footing and can participate fully in the proceedings. I also have to have regard to the need to save expense, deal with the case in ways

which are proportionate, ensure that it is dealt with expeditiously and fairly, allot to it an appropriate share of the court's resources whilst taking into account the need to allot resources to other cases, and also enforce compliance with rules, practice directions and orders.

10. Mr Latimer weighs the substantial evidence from the claimant against the very much thinner evidence produced in answer to the continuation of the freezing injunctions by the respondents, which is a little less than 45 pages in total. Mr Latimer emphasises also that the claimant had been given permission to serve evidence in reply to the respondents' evidence, yet much of the claimant's evidence is said not to be truly evidence in reply. In particular, it addresses two matters wholly extraneous to the respondents' evidence.
11. The first is evidence of what has been referred to as 'a third purported restructuring' of INC Travel Group Limited and Fresh Thinking Group Limited, which is said to involve breaches of the freezing orders by those two companies, and possibly involving breaches of other freezing orders against other of the respondents. That only took place on or about 22 and 23 March this year and thus post-dated the respondents' evidence. Clearly, the claimant's evidence as to that cannot be truly reply evidence. Reference is also made to what are said to be other potential breaches of the freezing injunction on the part, I think, of Mr Scott Dylan and Mr Gareth Dylan. Mr Latimer's submissions are, as I say, fully set out in his skeleton argument.
12. This morning, Mr Latimer made it clear that his application for an adjournment is intended to afford the respondents an opportunity to consider adducing further evidence in response to that of Mr Cooper and Mr Kenyon, and that Mr Latimer is giving no warranty that any of the respondents will take advantage of that opportunity. The purpose of an adjournment is for the respondents to consider whether, and if so how, they should respond to the claimant's evidence served on 1 June. It is said

that they need to evaluate the claimant's evidence; they need an opportunity to go away, consider the matter, and if appropriate gather new evidence. That will enable the parties to come back to court in an organised way, having decided what points should and should not be taken.

13. Since, in the meantime, the freezing relief will continue, that, Mr Latimer says, will occasion prejudice to no one. After all, there has been no costs and case management hearing in the litigation so far, and there is no trial date yet in sight.
14. Mr Latimer's fallback position would leave the door open to enable the respondents to come back to court in the future, should they wish to challenge the further continuation of the freezing relief, without having to overcome the hurdle of showing a material change in circumstance since today's hearing.
15. Mr Latimer has taken me through the chronology of events. He emphasises that the claimant has put in evidence of great length and of what Mr Latimer describes as argumentative, or perhaps more accurately, a contentious, nature. He submits that the claimant's reply evidence should have been targeted on the respondents' own witness evidence. He points to the fact that Mrs Glover was not involved, or is not said to be involved, in the restructure. He extended that to Mr Gareth Dylan also, although I am not sure that that is strictly correct.
16. Mr Latimer acknowledges that the third purported restructure of the companies post-dated the respondents' evidence; but he says that that restructure having come to the bank's attention, its solicitors should either have come back to court to seek the court's permission to put in further substantive evidence addressing that matter, or they should have got in touch with the respondents to seek to secure their agreement to that evidence being put before the court, and to agree any

consequential further directions, including affording the respondents an opportunity to respond to the claimant's further substantive evidence. He criticises the claimant and its solicitors for a lack of communication. He also criticises them for a failure to warn the respondents in advance of the extent of the reply evidence. That left the respondents faced with what Mr Latimer described as 'a fait accompli'. He described the respondents as being locked into a problem of the claimant's own making. That was compounded by the fact that the respondents' solicitor, Mr Smith, was on holiday at, or shortly after, the time when the claimant served its evidence on 1 June. As a result, it was not until 17 June that it was possible for the respondents to have a consultation with leading counsel, Mr Mark Harper QC. That left seven working days before finally, on Tuesday 28 June, at 3.55 in the afternoon, an email was sent to the claimant's solicitors, which was the first indication that the respondents would be seeking an adjournment of this hearing and proposing what Mr Latimer described as a practical way forward. That email had been preceded by an email of 21 June, at 10.50, which had referred to the consultation with leading counsel on 17 June, following on from which Brabners, the respondents' solicitors, had stated that they were awaiting their clients' instructions as to the proposed approach to the return hearings. The email also commented that having four clients made that something of 'a logistical challenge', although the solicitors hoped to be in receipt of the respondents' instructions within the next 24 to 48 hours and would respond substantively as soon as they were able after that. In the meantime, their clients' position was expressly reserved. It was a week later that the substantive response came in the form of the request for an adjournment of the return hearing to the first available date after 1 August, with costs of the application and adjournment being reserved.

17. Mr Latimer pointed to specific paragraphs in Mr Cooper's fifth affidavit. He identified paragraphs 19 to 30. Looking at those paragraphs, it seems to me that although they do contain argument as well as evidence, those paragraphs are truly responsive evidence, replying to the witness evidence of

the respondents. The same applies to paragraphs 36 to 42, also identified by Mr Latimer, which are a response to Mr Mason's evidence. Mr Latimer also identified paragraph 45, addressing the third purported restructuring, which is certainly not reply evidence; but that does relate to matters with which the respondents, and particularly Mr Antrobus and Mr Mason, were clearly involved. Paragraph 52 was also identified by Mr Latimer. That relates to possible breaches of the freezing injunctions. Mr Latimer also referred me to paragraph 63 of Mr Cooper's affidavit, where it is said that his acknowledgment that the freezing orders, by their very nature, caused hardship considerably downplays the extent of the hardship which is being caused to each of the respondents by the continued existence of the freezing orders, a matter addressed at paragraph 17 of Mr Latimer's skeleton.

18. In response to a question from the bench, Mr Latimer did not invite me to differentiate in any way between any of the four respondents, although he acknowledged that, if it were so minded, it would be open to the court to do so.

19. Mr de Mestre strongly opposes the adjournment application for reasons which were addressed in a supplemental skeleton that he produced on 1 July, in advance of receipt of Mr Latimer's skeleton argument in support of his adjournment application. In summary, Mr de Mestre submits, first, that the adjournment application is made far too late, having first been requested, entirely out of the blue, at 3.55 on Tuesday 28 June, which was the day that the bundles for the return hearing had been lodged and distributed, and the day before skeleton arguments were due. Mr de Mestre says that no satisfactory explanation for the delay has been given, particularly bearing in mind that the hearing has been fixed since March of this year, and that the claimant's reply evidence, which apparently prompted the adjournment application, was served over a month ago on 1 June.

20. Secondly, Mr de Mestre says that the basis of the application, which is that the respondents have had no opportunity to provide their explanations in relation to matters referred to in the claimant's latest evidence, is both unsatisfactorily vague as to what the allegedly new material is, and is, in any event, wrong as a matter of fact.
21. Thirdly, Mr de Mestre submits that any adjournment would serve no purpose other than to increase the parties' overall costs, and would waste the very substantial costs already incurred by the claimant in preparing for what it had assumed would be a fully effective substantive return date; an assumption which was entirely reasonable in circumstances where the respondents had given no indication at all, until a few days ago, that they intended to do anything other than to seek to resist the further continuation of the freezing orders at a fully effective hearing. It would also mean that the substantive hearing of the claimant's injunction application would be delayed for a further significant period, bearing in mind the eight months that have already passed since the without notice injunctions were made and initially continued, and when the parties should instead be concentrating on progressing the proceedings themselves.
22. Mr de Mestre elaborates upon, and develops, those submissions in his written skeleton argument. In his oral submissions to the court, Mr de Mestre suggested that Mr Latimer was dwelling in 'a parallel universe'. He emphasised the inadequacy of Mr Smith's evidence for the purpose of securing an adjournment of this long listed return date; and he pointed to the shifting basis upon which the application is being advanced. Now it is not to put in further evidence but to afford an opportunity to the respondents to do so if they are so minded.
23. Mr de Mestre points to the fact that the reasons for an adjournment are effectively confined to three paragraphs, paragraphs 14 to 16, of Mr Smith's supporting witness statement. Mr de Mestre

criticises the respondents for their sustained failure to identify the grounds on which they seek to resist the continuation of the freezing relief. It is not clear, despite repeated requests in correspondence for the respondents to do so, whether they are saying the claimant has failed to show an arguable case, or has failed to show a risk of dissipation of assets, or has failed to show that the interests of justice support the continuation of freezing relief, or whether the respondents are intending to rely upon all of those potential grounds of opposition. The respondents are said to have had more than a month to think about their response to the claimant's new evidence, and all we are now told is that they are still working out how they should respond to it.

24. Mr de Mestre took me again through the recent correspondence; and he emphasised that until 3.55 on 28 June, there was no suggestion that any adjournment of the substantive return date would be sought. Mr de Mestre submitted that Mr Latimer's suggestion that the claimant had not been entitled to rely upon matters post-dating the service of the respondents' evidence was extraordinary. He submitted that it cannot be right that an applicant for freezing relief should not be entitled to serve evidence, a month before the return date, addressing matters that have occurred and come to the applicant's knowledge only after the respondents have served their own evidence.

25. Mr de Mestre submitted that the court should not accede to a last-minute adjournment application without good reason. The respondents should have identified the factual matters which they would wish to address. But, in any event, any further evidence of matters of fact is likely to be incapable of resolution on an interim application of the present kind and, therefore, it will serve only to muddy the waters, without assisting the court in coming to a conclusion on those matters which are relevant to the decision whether to continue freezing relief. The court cannot be satisfied that any substantial evidence will be forthcoming that may affect the position at an effective return hearing of the freezing relief.

26. Mr de Mestre also emphasised that it is wrong to look at the position only after service of the claimant's latest evidence. The respondents have had every opportunity to deal with the third purported restructuring before now. This took place on 22 to 24 March, and came to the notice of the claimant as a result of its scrutiny of filings at Companies House shortly thereafter; and this provoked a letter on 25 March 2022 in which the respondents were invited to provide an explanation. At paragraph 6.2 of that letter of 25 March, all of the respondents (other than Mrs Glover) were invited to serve affidavits providing a full explanation as to their knowledge of, and involvement in, the transfers and steps identified in the letter as constituting the third purported restructuring. That request was repeated in a letter of 29 March where, at paragraph 3.6, it was said as follows:

"We expressly draw to your clients' attention the fact that, whilst our client has already incurred a large amount of costs in relation to the Freezing Orders, it is yet to incur much of its costs in relation to its Reply Evidence (as we await responses to a large number of outstanding queries we have raised of your clients that need to be dealt with in the Reply Evidence and, as you are aware, there remain issues in relation to our client's information sharing proposals which our client is seeking to resolve as a preliminary matter) and the Further Return Hearings (in particular the brief fees of [counsel] ... are yet to be incurred), such that your clients would be at risk of paying a significant amount of our clients' costs on the indemnity basis if they refuse to agree to [the claimant's] ... offer."

27. That offer was, in essence, for the respondents to consent to the freezing orders continuing against them. Further information was sought by the claimant. In response, Fresh Thinking Group Limited wrote on 31 March making it clear that the respondents did not believe that they should provide the claimant with any details of the proposed restructuring. On 29 April, the claimant's solicitors wrote again seeking details of the restructuring; and at paragraph 6.2 they expressly put the respondents on

notice that the claimant intended to exhibit all of the interparty correspondence and associated documentation on these issues to its response evidence in support of the renewal of the freezing orders. That was also made clear in a letter to Mr Antrobus of 23 May 2022. Mr Antrobus's response was not made until 21 June, by way of an email of that date, in which he made it clear that his view was that the claimant was fishing for information to which it was not entitled.

28. In the light of that correspondence, Mr de Mestre submitted that there was a clear inconsistency of approach on the part of the respondents. They had been given every opportunity to provide evidence about the proposed restructuring and yet they had failed to do so. Mr de Mestre also made the point that Mr Gareth Dylan, Mr Antrobus and Mr Mason had made no attempt to curb activities on the part of Mr Scott Dylan when they were first alerted to the disappearance of over £13 million from the companies.
29. So far as Mr Latimer's fallback position was concerned, Mr de Mestre submitted that this was not a satisfactory approach to the return date of an application to continue interim freezing relief. Although there had been a proviso along the lines suggested by Mr Latimer in the freezing order that had been continued by Mr Justice Mellor, that was simply a response to the length of time that would be involved before the effective return hearing could take place. It would be unsatisfactory to allow the respondents an opportunity to revert to court to seek to have the freezing injunctions varied or set aside when they had failed fully to contest them at the listed return date. It would be inappropriate to allow them to do so because it would involve the claimant having to get back up to speed at a time when it might well be having to focus upon other aspects of the litigation. It would also result in unnecessary additional costs.

30. Mr de Mestre's position was that the court should refuse both the adjournment application and the application to continue the freezing relief with the proviso suggested by Mr Latimer. If the court were minded to accede to either limb of Mr Latimer's application, then the respondents should be ordered to pay the costs thrown away.
31. In his brief reply, Mr Latimer picked up on this latter observation, which he said revealed the claimant in its true colours as a litigant seeking to recover its costs of and incidental to the applications for freezing relief. What the claimant really wants to do, Mr Latimer said, was to go ahead and gear matters up for an application for costs. Mr Latimer emphasised that the key point is unfairness. Given Mr Smith's absence on holiday on or about 1 June, and the consultation with leading counsel on 17 June, it was a matter to be applauded, rather than criticised, that the respondents first attempted to see if they could go ahead with an effective hearing today, and then finally were compelled to admit defeat and make their present application for an adjournment. Mr Latimer suggested that what had passed in correspondence between the parties was neither here nor there because it was nothing to do with the fairness of today's hearing.
32. Those were the submissions. I agree with Mr Latimer that the court must focus upon the fairness of the return hearing of the claimant's application for the continuation of the interim freezing relief; but I am entirely satisfied that it would be fair to all of the respondents for this hearing to continue, as it has been listed since March. A lot of the evidence of which Mr Latimer complains is truly reply evidence. Those parts of the claimant's evidence that are not truly reply evidence relate to matters involving most of the respondents which have taken place since the service of the respondents' evidence. The respondents have been given every opportunity to explain the third purported restructuring, and they have failed to do so, or to show any willingness to do so. In those circumstances, it is not appropriate for the respondents now to come along to court and say: well, we

now wish to consider whether we should produce this evidence: They have had ample opportunity to do so.

33. In his skeleton argument, at paragraph 19, Mr de Mestre submitted that the lack of notice of an adjournment application is a matter the court is entitled to take into account when assessing whether or not the alleged need for an adjournment is made out. He referred me to observations of Mr Justice Coulson in *Fitzroy Robinson Limited v Mentmore Towers Limited* [2009] EWHC 3070 (TCC) at paragraph 11. That was a case where notice of an intention to seek to adjourn a trial was given the day before a pre-trial review. Mr Justice Coulson expressed himself to be troubled in a number of ways by the defendant's conduct past and present. First, there had been their failure to give any indication until the day before the PTR that they intended to apply for an adjournment of the trial. Such an absence of notice was said to be inexcusable and seemed to the judge to be a strong indication that the defendants were using this application as a negotiating tactic. Mr de Mestre submitted that, in such circumstances, the court and the claimant are entitled to expect that an applicant upon whom the onus of justifying an adjournment lies, and who makes a very late application, should provide cogent and compelling reasons for the delay in making the application. Mr de Mestre submits that, in the present case, the explanation for the delay is far from compelling. I agree with that.

34. I do not accept Mr Latimer's submission that this is a case where everyone is locked into a problem of the claimant's own making. This is a case in which it seems to me that the respondents have been engaged in tactical manoeuvring. They have failed to assist the claimant by identifying any basis or bases upon which they propose to resist the continuation of freezing relief. They now say that they have been taken aback by the provision of extensive evidence, addressing matters about which the claimant had been tasking them, and making enquiries, almost ever since the matters giving rise to

that evidence have taken place. It does seem to me that there is tactical manoeuvring on the respondents' part with a view to seeking to avoid, or at least leave open the opportunity for challenging, freezing relief which, on the present state of the evidence, they must recognise is likely to be continued against them.

35. But even if that is not the case, I am entirely satisfied that any evidential difficulties facing the respondents are of their own making. They could, had they wished, have assembled the evidence they needed in response to the inevitable further evidence from the claimant bank, and yet they have chosen not to do so. I am satisfied that they will suffer no unfairness if the return date goes ahead as planned.

36. So, for all those reasons, I refuse Mr Latimer's adjournment application, and the return hearing will continue, albeit after the short adjournment, which will give Mr Latimer the time he said he would need to take instructions from his four clients.